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director, and I know -- well, the union came in and discussed it with, actually, the general manager.

Q Who is the general manager?

A Shane Krige.

Q What did you discuss with Mr. Evangelista?

A Well, I just said -- I just, you know -- he said -- like he pawned it off to human resources, it's up to them, is what he was saying. So I said, me and Carlos are the same situation, and Evelio, I mean, what's the difference between me and him, we all do the same job, we all worked the same -- roughly the same amount of years there, did the same job. I went down, told them the situation, they said, yes, you're a front bartender; Carlos and Evelio went down and did the same thing and they said no. They actually did -- they actually said in the files it said service bartender. But the thing is, we had two managers prior to closing the hotel who came back and reopened it, so they would have seen them working as front bartenders in the

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old hotel.

Q Which managers?

A It would have been Anthony Evangelista and Kareem, I forget his last name.

Q Did Mr. Evangelista ever tell you why the Plaza had assigned Carlos Rivera to work as a service bartender after the hotel reopened in 2008?

A No, he never gave me reason. He just said that it's a human resources decision.

Q What did you discuss with Mr. Buena about Mr. Rivera's situation?

A Well, we just in general -- the same conversation, you know, I went down, did the same thing, got the job behind the front bar, they transferred me over, and they didn't with Carlos and Evelio, and they said it's a human resources decision.

Q So you just pretty much restated what happened?

A Yes.

Q Did Mr. Bueno say anything regarding Mr. Rivera's assignment to work as a service bartender?

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A No.

Q And Shane Krige, you stated that you were involved in a conversation with him as well?

A No. The business agent came in, Eddie Cedeno, at the time, and you know, he asked Shane Krige to transfer him over, and he said he would get back to him, and he called him back, whatever, and in the end he just said, no, they're service bartenders.

Q Why do you think -- let me withdraw that.

Did Carlos ever tell you why he believed he was assigned to work as a service bartender in 2008 by the Plaza instead of being assigned to work as a front bartender?

A Yeah. I mean, basically he said there's discrimination, he's Spanish and I was white, and he wasn't saying it of me but that's basically the way it looks like. You know, there's a -- an awful lot of people came back to the hotel -- doormen, waiters, cooks -- and we all knew each other, some of us about twenty years, and you know, they're all coming

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back to their positions -- if someone's a doorman, he's back as a doorman, he's a cook -- then me, Carlos, Evelio, the three bartenders come back and all of a sudden I'm in the front bar and they're pushed back to the Palm Court. So everybody's asking the same question -- why.

Q You said everybody was asking the same --

A All the guys -- like, a lot of guys we all know for twenty years, they said what happened with Carlos and Evelio, why are they down there and why are you over there -- they should be over there with you, and I said, yes, they should be, but they won't give us an answer. So the assumption is because they're Spanish. I don't know what -- that's the assumption. I mean, I can't say what people are --

Q How about yourself, what do you think?

A Yeah, I can't -- I can't -- it's either that or -- I mean, I can't see another reason. I mean, I know that some of these -- some of these new hires, the bartenders, because they

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 2 were friends of certain managers they got the
 3 job which is good -- I mean, that's okay, but
 4 you can't just jump ahead of people that have
 5 been there for years. You can hire them
 6 after, yeah, sure.
 7 (Whereupon, an off-the-record
 8 discussion was held.)
 9 (Whereupon, a short break was
 10 taken.)
 11 Q After 2008, when you returned to the
 12 hotel, the Plaza Hotel, did you ever discuss
 13 with any managers Carlos's situation -- to be
 14 specific, the fact that he used to work at the
 15 Plaza in 2005 as a front bartender and when he
 16 came back in 2008 he was assigned to work as a
 17 service bartender?
 18 A Yeah. Anthony -- Anthony Evangelista
 19 would have been would I would have talked to.
 20 Q Okay. And did you already -- what did
 21 you discuss?
 22 A Yeah, I just said -- I said, how come,
 23 you know, you put me back in the front bar
 24 when I went up to human resources, how come
 25 Carlos and Evelio weren't, and he said it's a

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 2 human resources decision.
 3 Q Did he say who in human resources?
 4 A Rajan.
 5 Q Rajan Lai?
 6 A Yeah.
 7 Q Who said that it was Rajan Lai's
 8 decision?
 9 A Anthony Evangelista.
 10 Q When did that conversation take place,
 11 approximately?
 12 A Well, it would have been sometime in
 13 April, I presume, when we opened the Rose
 14 Club.
 15 Q And did you observe what effect, if any,
 16 the change in position had on Carlos Rivera in
 17 2008?
 18 A Yeah. He was, you know -- I presume he
 19 was disappointed, probably of felt a bit kind
 20 of humiliated.
 21 Q Did you observe like any change in how
 22 Carlos behaved at work?
 23 A Well, he still did his job, you know,
 24 he's still quite a pleasant man, but you know,
 25 he was down about it, I would say.

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 2 Q He was down?
 3 A Yeah.
 4 Q When you say down, can you tell us
 5 what you mean by that?
 6 A I suppose upset, despondent.
 7 Q Why do you say that?
 8 A By talking to him, you know. You know,
 9 he felt hardened by it, I would say.
 10 Q Now, I'm going to draw your attention
 11 back to P5. Do you know who initiated this
 12 arbitration?
 13 A It would have been Eddie Cedeno.
 14 Q You're -- are you a union delegate?
 15 A I am now.
 16 Q What's the process, if you know, for
 17 a dispute to culminate in arbitration like
 18 the dispute in P5?
 19 A Yeah, what happened when you have
 20 a situation like this, you would call in
 21 the business agent, and he would talk to
 22 Rajan, and if they couldn't resolve it,
 23 then they'd would go to the impartial
 24 chairman.
 25 Q And this decision, P5, is that from

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 2 the impartial chairman?
 3 A Yes.
 4 Q When you testified at the arbitration in
 5 connection to P5, did you observe anybody else
 6 testify?
 7 A Carlos testified, Eddie Cedeno, Emilio,
 8 Rajan Lai.
 9 Q Did you witness Rajan Lai testify?
 10 A Yes.
 11 Q Do you know what Rajan Lai said as
 12 a justification for -- let me withdraw
 13 that.
 14 What did Rajan Lai say?
 15 A Basically the question was asked why
 16 they weren't front bartenders --
 17 Q When you say they, who are you referring
 18 to?
 19 A Carlos and Evelio. So Rajan's answer
 20 was that -- I believe, I'm trying to think
 21 back -- I believe he said that they weren't
 22 front bartenders, that they were service
 23 bartenders in the files in the human resources
 24 offices.
 25 Q Did he say anything else?

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A No. I mean, he could have, I can't remember now exactly.

Q Have you ever socialized with Carlos Rivera outside of the Plaza?

A No.

Q Okay. I have no further questions.

MR. McLANE: Can you just make sure the witness has all the exhibits.

MR. ZAPATA: Sure.

THE WITNESS: I just have to go to the bathroom.

(Whereupon, an off-the-record discussion was held.)

MR. ZAPATA: Two more questions.

MR. McLANE: Sure.

Q When you -- when you returned to the hotel -- the Plaza Hotel in 2008, and you were initially appointed to work as a service bartender then as a front bartender shortly thereafter, did you have to serve a probationary period?

A No. The new hires did, but people who

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were recalled didn't.

Q That was it. Thanks.

EXAMINATION BY

MR. McLANE:

Q Mr. Flanagan, my name is Bill McLane, and I'm with the law firm of Littler Mendelson, and my firm and I represent the defendants in the matter that Mr. Rivera has brought against my clients. And just a couple things -- while I'm asking you questions, if you do need to take a break for any reason, just let me know, and we'll take a break, you don't have to tell me why but please do that. And you understand that you're under oath today --

A Yes.

Q -- and that your obligation to testify truthfully today is the same as if we were in a court of law; you understand that?

A Yes.

Q Do you know why Mr. Rivera is suing my clients?

A Yes, I believe so. I believe he believes he's discriminated against.

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Q Do you know on what basis?

A I believe race.

Q Anything else?

A No.

Q How do you know that?

A Well, from talking to him at work.

Q When was the first time that you learned that Mr. Rivera was suing my clients?

A I think after this impartial chairman was all said and done, I think after that then he pursued a civil case.

Q What did he tell you about pursuing a legal case?

A He said he was going to hire a lawyer and look into the situation.

Q And did you know what situation he was going to look into?

A Yeah. He wanted -- you know, he felt that he was discriminated against because he wasn't given the front bartender position back.

Q And this was after he received a decision from --

A From the impartial chairman.

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Q -- from the impartial chairman? Just one more instruction, in everyday conversation we anticipate what the other person is going to say before they're done saying it, but it will help the court reporter if you wait until I finish my question before you answer, and I, in turn, will wait until you finish your answer before I ask my next question. It's tough to do, but we'll try because helps the court reporter to have a clean record.

Just so I'm clear, the impartial chairman ruled in Mr. Rivera's favor, correct?

A Yes. They got backpay for the money loss.

Q And how did you become aware of that?

A Well, I was at the case, but somebody came in one day and somebody told me Carlos won his case.

Q Okay. And it was after that, that he told you he was looking to hire a lawyer?

A Yes.

Q Okay. And did he tell you why he was looking to hire a lawyer?

A Again, he said he felt he was

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 2 discriminated against, that it was wrong what
 3 the hotel did.
 4 Q Did he tell you he thought he was
 5 discriminated against because of his race?
 6 A Yes.
 7 Q What is Mr. Rivera's race?
 8 A Hispanic.
 9 Q Do you know where he's from?
 10 A Puerto Rico or Dominican Republic.
 11 Q You're not sure which?
 12 A I'm not sure.
 13 Q Have you ever had any discussions with
 14 Mr. Rivera's about where he was from?
 15 A Yes. About his parents, I think one is
 16 Puerto Rican, one's Dominican or something
 17 like that.
 18 Q Do you know where Mr. Rivera was born?
 19 A No.
 20 Q Do you know whether or not he's an
 21 American citizen or not?
 22 A No.
 23 Q What color is Mr. Rivera's skin?
 24 A I would say light brown.
 25 Q And you testified about the skin color

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 2 of some other folks earlier, and can I take it
 3 that the people that you identified as having
 4 light brown skin, they would have the same
 5 skin as Mr. Rivera?
 6 A Yes.
 7 Q How old is Mr. Rivera?
 8 A Mid-forties.
 9 Q How do you know that?
 10 A Well, we worked in the hotel roughly
 11 around the same time, and we discussed
 12 birthdays and ages before.
 13 Q Do you know Mr. Rivera's birthday?
 14 A No. Birthday, no.
 15 Q Do you know where he lives?
 16 A New Jersey.
 17 Q Okay. When after the impartial
 18 chairman's decision in favor of Mr. Rivera
 19 giving him backpay, was that the first time he
 20 mentioned to you that he wanted to sue the
 21 hotel for race discrimination?
 22 A I believe so.
 23 Q Okay. And prior to that he had never
 24 talked to you about suing the hotel about race
 25 discrimination?

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 2 A Not that I can remember.
 3 Q Did you talk to anybody else after --
 4 well, strike that.
 5 Did you talk to Mr. Tejada after the
 6 impartial chairman's decision?
 7 A Yes.
 8 Q And did Mr. Tejada indicate that he was
 9 looking for a lawyer to sue the Plaza Hotel
 10 for race discrimination?
 11 A Yes.
 12 Q And do you know whether or not he has
 13 done so?
 14 A No.
 15 Q Prior to today, when was the last time
 16 you saw Mr. Rivera?
 17 A Over ten days ago.
 18 Q When was the last time you spoke to
 19 Mr. Rivera regarding this lawsuit?
 20 A Few weeks ago.
 21 Q And what was the nature of that
 22 discussion?
 23 A No. He was just -- I got subpoenaed and
 24 he was just reminding me that it was coming up
 25 and the date.

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 2 Q The date of this deposition?
 3 A Yes.
 4 Q Did Mr. Rivera tell you that you were
 5 going to be subpoenaed before you were
 6 subpoenaed?
 7 A No.
 8 Q So you got the subpoena --
 9 A At work.
 10 Q -- it was a surprise?
 11 A Yes.
 12 Q You were served at work?
 13 A Yes.
 14 Q Okay. And you weren't expecting that?
 15 A No, I knew down the line that I would
 16 have to come and testify.
 17 Q And why did you know that?
 18 A Because he said he was going to call
 19 witnesses for people who, you know, worked in
 20 the hotel before, saw him working at the front
 21 bar.
 22 Q And have you ever spoken to Mr. Rivera's
 23 lawyer prior to today?
 24 A One short discussion --
 25 Q When was that?

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 2 A -- over the phone. It was -- it
 3 wouldn't be long after he was hired by Carlos.
 4 Q What did you -- what did you discuss?
 5 A It was just that I -- he was saying that
 6 he was Carlos's lawyer, introduced himself,
 7 and maybe we could have a meeting some day.
 8 Q Anything else?
 9 A No.
 10 Q Did you ever have that meeting?
 11 A No.
 12 Q Other than Mr. Rivera's and his
 13 attorney, have you spoken to anybody else
 14 about this lawsuit?
 15 A Yes. At the hotel.
 16 Q Who?
 17 A Evelio, the bartender, and a couple the
 18 waiters that work there a long time.
 19 Q What are the waiters names?
 20 A Larry -- you want the full name or
 21 just --
 22 Q Yeah.
 23 A Larry Gobin.
 24 Q Gobin?
 25 A Yeah. G-O-B-I-N. Francisco Marquez.

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 2 Q Anyone else?
 3 A Well, Evelio Tejada.
 4 Q Mr. Tejada is a bartender?
 5 A Yes.
 6 Q And Larry and --
 7 A They're servers. Francisco.
 8 Q They're servers. They wait tables?
 9 A Yes. We had to change the name on that.
 10 Q Right. And Mr. Tejada is a bartender
 11 where?
 12 A He's in the Champagne Bar, Rose Club.
 13 Q What did you talk to Larry about with
 14 respect to this lawsuit?
 15 A No. We were just talking, discussion,
 16 that I got a subpoena, and he was -- you know,
 17 we were just saying what happened with Carlos
 18 and why he was suing.
 19 Q What did Larry say?
 20 A He just said, yeah -- I mean, he says
 21 understands what he's doing.
 22 Q So in other words, what I'm trying to
 23 find out I guess is, did Larry find out about
 24 the lawsuit from you?
 25 A Yes.

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 2 Q You would have told Larry -- well,
 3 strike that.
 4 Did you tell Larry the reason why
 5 Mr. Rivera was suing the Plaza?
 6 A Yes.
 7 Q And what was the reason?
 8 A I would say that -- it's common
 9 knowledge because we'd all worked together for
 10 years, and seniority, and then when this case
 11 came about, and then -- Carlos has to hire a
 12 lawyer, he's pursuing his case against
 13 discrimination.
 14 Q You said that to Larry?
 15 A Yeah.
 16 Q What did Larry say?
 17 A Larry said, yeah, he -- he said, oh,
 18 yeah, really -- you know, he just made an
 19 off-the-cuff remark, you know, oh, really, is
 20 he going to do that. It wasn't a big
 21 discussion --
 22 Q And what about Francisco?
 23 A Yeah. Francisco, I said the name thing
 24 to him, yeah.
 25 Q What did Francisco say?

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 2 A He was surprised that he was doing it.
 3 Q Did he say why he was surprised?
 4 A No.
 5 Q I hate to ask these questions but I feel
 6 I have to. What color is Larry's hair?
 7 A It's light brown.
 8 Q His eyes?
 9 A I don't know.
 10 Q What about Francisco's hair?
 11 A He doesn't have any anymore.
 12 Q Okay. And --
 13 A He's got brown eyes.
 14 Q You saw his eyes -- brown, okay. You
 15 said he's Spanish?
 16 A Yeah.
 17 Q Where is he from?
 18 A Dominican Republic.
 19 Q Now, in nineteen -- you started at the
 20 Plaza 1988, correct?
 21 A Yeah. Actually, I started prior, in
 22 '86, and I left and came back so my new hire
 23 date would be '88.
 24 Q And you were only there for a couple --
 25 for a short period of time in '86?

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2 A Yeah. Ten months.
3 Q When you started at the Plaza in 1986 --
4 strike that.
5 You're a union delegate today?
6 A Yes.
7 Q When did you become a union delegate?
8 A When they reopened the hotel.
9 Q In February 2008?
10 A Yes.
11 Q And a union delegate is like a shop
12 steward, right?
13 A Yeah, same thing.
14 Q You're not a union officer?
15 A No.
16 Q And Mr. Cedenio is the business agent?
17 A Yes.
18 Q And he doesn't work in the hotel, right?
19 A No.
20 Q He works at the office --
21 A At the office. Right.
22 Q Who held your position as union delegate
23 when the hotel closed in 2005?
24 A Would have been Jean Oliver.
25 Q And what happened to Jean?

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2 A Jean, he retired and then he passed
3 away.
4 Q Did he retire at the time the hotel
5 closed?
6 A Yeah. He was at that age, sixty-five,
7 and he took the severance, you know.
8 Q And am I right from your earlier
9 testimony that quite a few people did that who
10 were --
11 A Yes. Yes, a lot of people that had been
12 there a long time.
13 Q Okay. Now, in 1986, when you first
14 started to work at the Plaza, were you a
15 member of the union?
16 A Yes. You have to -- you automatically
17 have to join, after three months you're a
18 member.
19 Q What's the name of the union?
20 A It's local 6. Hotel restaurant
21 bartenders union.
22 Q So since your entire tenure at the Plaza
23 Hotel you have been a member of local 6?
24 A Correct.
25 Q Prior to working at the Plaza, were you

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2 a member of local 6?
3 A No.
4 Q Is it true today that all the bartenders
5 at the Champagne Bar, the Rose Club, and the
6 servers at the Palm Court -- are they all
7 local 6 union --
8 A Yes.
9 Q -- members? Do you know whether or not
10 the local can refuse membership to somebody?
11 A I don't know if they can, but what
12 they -- generally if they hire somebody, I
13 know they have to join the union within a
14 certain -- they can't work in the hotel and
15 say I don't want to be a union member. So
16 they have to join the union.
17 Q Do you know if the union has any say in
18 who becomes a member of local 6?
19 A No. As far as I know because I -- when
20 the hotel closed, I worked in the Four Seasons
21 when the Plaza closed, and the policy seems to
22 be the same everywhere, more or less, that if
23 you hire someone, if they weren't in the union
24 before, you know, it's okay -- and then they
25 just have to -- but they have to join.

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2 Q Okay. And as a result of your
3 membership in local 6, the wages you receive
4 and the benefits you receive are negotiated
5 between the union and the hotel, correct?
6 A Yes. Industry-wide agreement.
7 Q Right. And have you worked as a
8 bartender where you haven't been a member of
9 the union?
10 A Yes. I worked in an Irish pub.
11 Q Okay. Just -- is there a difference --
12 is it -- the question is, it better to be a
13 member of the union of local 6 than not to be
14 a member of local 6 if you're a bartender in
15 New York?
16 A There's -- if you're going to stay for
17 longevity you're definitely better in the
18 union because you get medical benefits and
19 pension, but if you're young and you want to
20 make fast money then you work in the Irish
21 bars.
22 Q So there's more -- working in the Irish
23 bars would be more cash per hour than working
24 at the Plaza?
25 A Wouldn't be more cash per hour, it would

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be more cash money you make, you know.

Q And when you talk about cash money you make, we're talking about money that --

A Tips.

Q Tips, okay. You get tips at the Plaza, right?

A Yes.

Q Are the tips at the Irish bars better than the tips at the Plaza?

A Well, yeah. Tips in the Plaza would be credit cards and tips in the Irish club is cash.

Q And why is it better to have cash than credit card?

A Well, it's in your pocket, you know, you have it right there.

Q Right.

A Tax purposes it's -- you don't pay as much.

Q Okay. But as an overall amount, putting aside the tax ability of it, from just a gross standpoint, is it better to work in the Irish pub?

A No. Hotel is better.

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Q And the union -- you have a pension plan with the union?

A Yes.

Q And how would you describe that -- is it a good plan, a bad plan, a fair plan?

A Compared to other plans, it's not great, but, you know, it's good. I mean, for someone -- like a bartender all my life, it's good to have a pension. I mean, most of the bartenders that I know, they don't have anything to fall back on.

Q And is that pension something that you contribute to out of your paycheck each week?

A It comes from your union dues. You pay dues every week.

Q You're not part of a 401K plan, are you?

A You have that as well.

Q You can have that?

A You can have that. What they do is -- it just came out the last five years, and you can deduct a percentage out of your paycheck, ten, fifteen, or even twenty-five percent, but they only take out fifteen thousand a year maximum.

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Q Max, okay. But if you don't choose to do the 401K plan, you're still a part --

A You have still have a pension, yeah.

Q And you established that the 401K has been in operation at the Plaza for -- or with the union for the last five years, so the folks who retired back when the Plaza closed in 2005, those folk's would not have been --

A They -- no.

Q So they chose to retire as far as you know based on their pension with the union plan?

A The pension with the union, obviously Social Security as well.

Q Right.

A The pension work is that you have to -- like, you get one credit for every thousand -- for every year but you have to work a thousand hours a year to get the credit and if it's up to twenty-five credits.

Q And do you know what the age limit is for the folks collecting the pension at the union, what the earliest age you could be to collect the pension?

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A The newest agreement was you have to be fifty-five and twenty-five years in the union and you get partial --

Q And then that would increase the older you are and then the more --

A Yes, exactly.

Q And the years would decrease, I suppose -- in other words, if I'm sixty-five and I retire, I don't need the twenty-five years --

A Yes, yes.

Q And besides the pension, any other benefits that are better being in the local 6 than just being a bartender at the Irish pubs?

A Yeah. You have the medical, you have the dental.

Q Anything else that you consider a benefit?

A I consider -- like if you're there over -- if you're vested, if you're there five years in the union, like, they can provide -- if you're buying a house, you know, a mortgage or a lawyer, closing fees, stuff like that.

Q I take it in the Irish pubs there wasn't

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a union delegate hanging around?

A No.

Q What's your role as a union delegate?

A Say, just like we have a schedule, you know, seniority people have their own schedule, you know, if we have rules and overtime, and you just enforce -- like, our managers change quite a bit, you know, they come for a year and a half and then they leave to go somewhere else. So sometimes people come in from different countries and they don't know, you know, that it's a union or, you know, they try to enforce their way of doing things.

Q So as a union delegate are you there to answer questions for the rank and file or employees that were inquiring --

A Yes.

Q -- about union issues?

A Yeah.

Q And are you there also as an advocate for them should they have issues with management?

A Yes.

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Q And am I correct that you would be the first person someone would go to if they had -- or should go to if they had an issue with management that they needed to be resolved?

A Yes. If -- a lot -- most of it's done verbally, you know, minor issues then we work it out among ourselves, but if they had to write somebody up or whatever, I would have to be there as a witness.

Q Right. So in other words, if they're going into for a disciplinary meeting with the --

A Yeah, we need a delegate. So --

Q Right. So when you were the union delegate, Mr. Rivera came to you and said I have an issue with seniority?

A We discussed it. But what happens is that when it becomes a mid -- like a serious issue, you bring in the business agent because I would have talked to Anthony Evangelista about it, and he would say, well, it's human resources decision, and then we'd call a business agent and he would come in to square

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things out.

Q You did talk to Mr. Evangelista about it, right?

A Yes.

Q And he did go -- had a conversation with someone at human resources?

A That's what he told me, right.

Q And you weren't in that?

A No.

Q You weren't a part of that --

A He just came back -- I had a discussion with him, he says, listen, I'm going to talk to human resources, I'll get back to you. He came back to me and says this is what they said.

Q And he said that Mr. Rivera --

A And Evelio are going to stay in the service bar.

Q Stay in the service bar. And again, you weren't there to see whether or not Mr. Rajan --

A I wasn't in the meeting, no.

Q -- whether or not anybody consulted a list that had been -- you weren't in the room

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when Mr. Evangelista met with Mr. Lai, correct?

A Correct.

Q And you're not aware during that meeting whether or not either Mr. Evangelista or Lai looked at or conferred with a list regarding seniority that had been provided to them by the union?

A Correct. I don't know what they discussed.

Q Do you know whether or not the union keeps a list of seniority?

A I'm not sure. I believe so. They do, because when we got laid off and we had meetings they had lists of peoples seniority.

Q Take a look at P4 which was previously marked, titled, Plaza Bartender Seniority List.

A Yeah, I got it.

Q Do you know who made that list?

A No.

Q On the -- on the upper right-hand side of that there's a -- if you turn the document around it would be on the lower right-hand

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 2 side, it says, Union 00196, do you know what
 3 that means?
 4 A I haven't a clue.
 5 Q So you don't know whether or not your
 6 union produced this list to Mr. Zapata in
 7 response to a subpoena?
 8 A Correct.
 9 Q You don't --
 10 A I don't know.
 11 Q Now, what was Mr. Lai's position back in
 12 2005 when the hotel closed?
 13 A He wasn't there.
 14 Q He wasn't there?
 15 A He didn't work there.
 16 Q Mr. Evangelista did?
 17 A Correct.
 18 Q And then Mr. Evangelista I think
 19 according to your testimony has his own
 20 business -- or had?
 21 A Him and -- we had one of the chefs and
 22 another manager, they opened up their own
 23 restaurant in the meatpacking district,
 24 restaurant and bar, and a -- it went under,
 25 you know, so the hotel was reopened, so he

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1 L. FLANAGAN
 2 came back to work there.
 3 Q So Evangelista opens the bar after the
 4 Plaza closes?
 5 A Correct.
 6 Q And then when the Plaza reopens he comes
 7 back?
 8 A Yes.
 9 Q And according to your testimony, he
 10 brought some of the people who worked with him
 11 down --
 12 A Yeah.
 13 Q Called the Gin Mill?
 14 A Gin -- Gin Lane.
 15 Q The Gin Lane, okay. So Mr. Lai had
 16 never seen Mr. Rivera behind the bar at the
 17 Plaza Hotel, as far as you know, back in 2005?
 18 A Correct.
 19 Q Okay. So it's possible then that if a
 20 bartender comes to Mr. Lai and says I was the
 21 front bartender at the Oak Room in 2005,
 22 Mr. Lai would either have to take his word for
 23 it or look at perhaps a document like the
 24 seniority list, correct?
 25 A Correct.

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1 L. FLANAGAN
 2 Q Now, take a look again at what we marked
 3 as P1. It's the -- it says March 2005 on the
 4 top of it. It's the first exhibit.
 5 A Yes. This one, right?
 6 Q Yes. Marked P1?
 7 A Yeah.
 8 Q Okay. Do you know whose handwriting
 9 appears on this document?
 10 A No.
 11 Q All right. Under the service bar, who
 12 is the Evelio?
 13 A That's Evelio Tejada.
 14 Q Now, Rubin --
 15 A Smith.
 16 Q Rubin Smith didn't come back when the
 17 hotel opened, did he?
 18 A No.
 19 Q And do you know whether or not he
 20 accepted the no recall right two weeks
 21 severance?
 22 A Yeah. He retired --
 23 Q Jose, do you know whether he accepted
 24 the two week severance?
 25 A Yes. He worked in another hotel and he

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1 L. FLANAGAN
 2 was happy enough there so he stayed.
 3 Q Sammie, did he accept the --
 4 A He retired, yeah.
 5 Q And Carlos we know came back, right?
 6 A Uh-huh.
 7 Q Arbonna?
 8 A Arbonna. That's Jose. He's back
 9 working in the Oak Bar.
 10 Q Okay. Orlando?
 11 A He's back in the Oak Bar as well.
 12 Q So Carlos Arbonna and Orlando all were
 13 taking the one week --
 14 A Yes.
 15 Q -- severance package?
 16 A Yeah.
 17 Q And Victor?
 18 A Victor, no. He's working in the Essex
 19 House now.
 20 Q Do you know if whether or not Victor
 21 took the two weeks --
 22 A He would have, yeah.
 23 Q And again, if you took the two weeks
 24 severance you were off the seniority?
 25 A Yeah. You were --

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1 L. FLANAGAN
 2 Q You --
 3 A You were finished with the hotel --
 4 Q I mean, you weren't --
 5 A You had -- what you had, you had the
 6 option as well of taking one week and the
 7 option, you know, when you came back taking
 8 the second week. Some guys did that, they
 9 kept it open and then, you know, three years
 10 down the line when we opened, they said I'm
 11 happy where I am now and they just collected
 12 the --
 13 Q So I see. So if I chose to take the
 14 one week severance with the recall right, then
 15 when I do get recalled I can say, you know
 16 what, give me the second week?
 17 A Correct.
 18 Q And then I won't bother you, I won't come
 19 back --
 20 A Yes.
 21 Q -- I'm happy with whatever I'm doing --
 22 A Yes.
 23 Q -- whether it's I'm retired or working
 24 at a new place?
 25 A Correct.

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1 L. FLANAGAN
 2 Q So I'm sorry -- Victor, he took the
 3 two weeks?
 4 A Yes.
 5 Q And he's working at the Essex House --
 6 A Yes.
 7 Q -- seems very happy?
 8 A Yes.
 9 Q Felipe -- do you know what Felipe did?
 10 A He retired.
 11 Q So he took the two weeks?
 12 A Yes.
 13 Q And Leo?
 14 A He's in the Hilton now, so he took
 15 two weeks as well.
 16 Q And Liam is you, so you took the
 17 one week --
 18 A Correct.
 19 Q -- and came back? And in the meantime
 20 you were working at the --
 21 A Four Seasons.
 22 Q -- Four Seasons? Much better at the
 23 Plaza, right?
 24 A Yeah --
 25 Q You don't have to -- I'll withdraw the

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1 L. FLANAGAN
 2 question.
 3 A I was part time at the Four Seasons, you
 4 see.
 5 Q And Yvenel?
 6 A Yvenel, he took the two weeks.
 7 Q And Paul?
 8 A He retired.
 9 Q Took the two weeks?
 10 A Uh-huh.
 11 Q Julio?
 12 A He took two weeks.
 13 Q And Wahid?
 14 A He -- yeah, he moved to Florida. He
 15 took two weeks.
 16 Q And now a bartender is a bartender is a
 17 bartender -- if you were a service bartender,
 18 you make drinks, right?
 19 A Correct.
 20 Q And if you work in the front bar, you
 21 make drinks, right?
 22 A Uh-huh.
 23 Q Yes?
 24 A Correct.
 25 Q And the only difference is one is you're

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1 L. FLANAGAN
 2 doing the room service or the restaurant and
 3 the other is you're doing the bar crowd,
 4 correct?
 5 A Correct.
 6 Q And is there a difference in hourly pay
 7 for the people who are service bartenders?
 8 A In the contract there is. In the -- the
 9 hourly pay in the old hotel is the service
 10 bartender would get a dollar fifty more an
 11 hour because he wouldn't be making tips. So
 12 now when we reopened or came back we all get
 13 the same pay, we all get the higher rate
 14 because he eliminated the bar-back position so
 15 we're doing that job now, so we're all in the
 16 same rate.
 17 Q Whether you're a service bartender or a
 18 front bartender you make --
 19 A Same rate, yes.
 20 Q Now -- but is there an impact on your
 21 compensation?
 22 A I -- how do you mean?
 23 Q Well, if you're a service bartender, are
 24 you sharing the tips from the front bars?
 25 A No, no, no, no. That's the main reason,

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1 L. FLANAGAN
 2 the front bar is a tip job, you know, you
 3 make -- you make a lot more money.
 4 Q So if I'm -- if I'm starting as a new
 5 bartender at the Plaza Hotel, what is my
 6 hourly rate?
 7 A Your hourly rate would be sixteen an
 8 hour.
 9 Q And do you know what the top rate is?
 10 A Yeah. Twenty-six.
 11 Q And that's based on seniority?
 12 A Yes -- what they've done now is that
 13 when they reopened the hotel they negotiated
 14 it so for a new hire for the first two years
 15 he would get seventy-five percent of the top
 16 rate, for the next two after that it's
 17 eighty-five, and then the fifth year he gets
 18 the full amount.
 19 Q Okay. And that was renegotiated -- or
 20 negotiated after the hotel reopened?
 21 A Yeah, they -- what they do is they call
 22 it -- because the mayor got involved so they
 23 call it a citywide agreement or a city hall
 24 agreement so it's some kind of different
 25 contract but --

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1 L. FLANAGAN
 2 Q Okay. But -- so if I'm making my -- the
 3 sixteen bucks an hour and I'm working in the
 4 Oyster Bar, I'm getting sixteen dollars an
 5 hour for every hour I work -- what else am I
 6 getting?
 7 A It depends on the business, whatever,
 8 tips. You know, if you're busy, you're going
 9 to make the money. If it's slow, you just --
 10 you make less. It depends --
 11 Q I'll make -- not going to make less than
 12 like sixteen bucks?
 13 A Yes. It's definitely more.
 14 Q And if I'm in the service bar --
 15 A That's your flat rate.
 16 Q Sixteen bucks an hour?
 17 A Yeah.
 18 Q And I'm making drinks for the guests in
 19 the hotel rooms?
 20 A Yes, but the -- yes, but the waiter's
 21 interacting with the guests so he gets the
 22 tips.
 23 Q Right.
 24 A So you give him the drink, he brings it
 25 to the guest.

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1 L. FLANAGAN
 2 Q And he gets the tip?
 3 A Yes.
 4 Q And do the service bartenders make
 5 drinks for the restaurant?
 6 A Yeah. Like the Palm Court -- Palm
 7 Court would have its own service bar just for
 8 that -- just for that place itself.
 9 Q Got you. And are you telling me that
 10 the waiters don't share the tips with the
 11 service bartenders?
 12 A They don't.
 13 Q Are they supposed to?
 14 A Most hotels do, but people are set in
 15 their ways, they're there for a long time.
 16 Q Is that a negotiated agreement?
 17 A No. It's individual hotels, but you
 18 can -- if you wanted to fight the situation
 19 you could, and technically most hotels, they
 20 give like ten percent of the tips, like if
 21 it's a cocktail bar or a service bar, but at
 22 the Plaza we never did.
 23 Q And is that true of the Palm Court
 24 too that --
 25 A Yes.

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1 L. FLANAGAN
 2 Q -- the Palm Court service bar doesn't
 3 get any tips --
 4 A No.
 5 Q -- from the waiters? But not that's
 6 negotiated?
 7 A No.
 8 Q It's just the --
 9 A The way it is, yeah --
 10 Q Now, looking at the P1 which is the
 11 March 2005 schedule, what happened to Chuck?
 12 A Chuck, he got a job in the Ritz-Carlton,
 13 and he just took the second week then, you
 14 know. He kept it open until -- he's happy --
 15 Q But eventually he took the two weeks?
 16 A Yeah.
 17 Q Okay. And he didn't come back?
 18 A No.
 19 Q And Ricky?
 20 A Ricky actually is the bartender in
 21 banquets right now in the hotel, but that's a
 22 private concession as well.
 23 Q I'll ask you more questions about that
 24 in a second. So he's back?
 25 A Uh-huh.

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L. FLANAGAN

1
2 Q And Evelio came back, right?
3 A Correct.
4 Q And whose Osvaldo?
5 A Osvaldo was a service bartender in the
6 Palm Court and he took the two weeks.
7 Q Took the two weeks. And now -- now we
8 have people who are bar-backs here, but you're
9 telling me now there's no bar-back positions?
10 A Yes. So what happened there is guys
11 took the two weeks, and like Jorge and Jose,
12 the third name down, they gave them jobs as
13 food runners, so basically it's the same
14 hourly rate.
15 Q So they got their two weeks and then
16 they have a new job position?
17 A They got the one week and then --
18 Q The one week, all right. But those jobs
19 are eliminated?
20 A Yes.
21 Q You're now doing that work?
22 A Correct. I didn't have to do that in
23 the Irish bars.
24 Q You did or didn't?
25 A I didn't. We had --

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L. FLANAGAN

1
2 Q And of course you shared your tips with
3 those people?
4 A Yes, yes. Gave them fifteen percent.
5 Q Do you know what happen to Angelo,
6 Andre, and Trinidad?
7 A Actually, Andre is in banquets as well.
8 He got a promotion to banquet bartender.
9 Q And Trinidad?
10 A He's -- actually, he's working in the
11 Hilton down here somewhere as a bartender.
12 He's at Hilton around here.
13 Q So he would have taken two weeks?
14 A Yeah.
15 Q And Jose -- Jose, I'm sorry, you said --
16 Angelo?
17 A Angelo is gone. He took the two weeks.
18 Q All right. So out of this list -- now,
19 is this everybody who was a bartender in
20 March 2005 that you recall -- is this the
21 complete list?
22 A It may not be the complete list. It
23 could be short a few guys there. I'm not
24 sure.
25 Q Anybody sticking out in your head as

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L. FLANAGAN

1
2 missing?
3 A Well, there's no -- there's -- I suppose
4 the schedule for the banquet bartenders isn't
5 up there. So that week there might have been
6 no banquets, you see.
7 Q Okay. So let's talk about the banquet
8 bartenders and what -- what is banquets as
9 appears on the schedule?
10 A Yeah. Banquets is like, we have a
11 landmark ballroom and a terrace room which can
12 can hold like five hundred people for dinner,
13 so what would happen is people would have a
14 wedding or a company Christmas party and they
15 would need bartenders to work the party, so
16 what they would do is we had five full-time
17 bartenders so sometimes Christmastime -- we
18 had a lot of small rooms as well for small
19 functions -- so you would have five full-time
20 bartenders, banquet, and then the service
21 bartenders would go in as extras if you had
22 enough bartenders upstairs. And the hotel
23 would charge a hundred and twenty dollars per
24 bartender, and the bartenders would get sixty
25 and the hotel would get sixty.

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L. FLANAGAN

1
2 Q And where would these bartenders come
3 from, the banquet bartenders, were they guys
4 who --
5 A They're permanently in the hotel.
6 Q So they're the Oak Bar, Oyster Bar guys?
7 A No. What it was is we had banquet
8 bartenders, five full-time bartenders, okay,
9 and when you needed the extra guys you would
10 take the service bartender guys because they
11 weren't making tips so they would get the
12 banquet party first.
13 Q Okay. So if I'm a full-time banquet
14 bartender and through some quirk the hotel is
15 not scheduled a wedding or a party for
16 two weeks, what am I doing?
17 A You see -- well, it's not on here. The
18 way it was worked in the hotel with the
19 bartenders and the waiters and banquets, the
20 banquet waiters would get a -- tips, right,
21 say it's twelve percent of what the sales was,
22 the bartenders never got that, we got a
23 hundred and twenty dollars, but you were
24 guaranteed thirty-five hours a week work. So
25 what they would do is like if it was quiet in

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1 L. FLANAGAN
 2 banquets and there's only work for two or
 3 three guys, they would put one guy on the
 4 schedule two to ten, and then he would relieve
 5 all the bartenders for their break.
 6 Q So you were guaranteed some hours --
 7 A Yes.
 8 Q -- at the -- I guess at the union rate?
 9 A Yes. You were guaranteed
 10 thirty-five hours a week. But a lot of guys
 11 they wouldn't take -- in the summertime
 12 instead they'd just take off, you know.
 13 Usually the banquet guys are the senior guys,
 14 they're there thirty, forty years, so they're
 15 just -- you know, it's easier work and you're
 16 just waiting for the pension to come through.
 17 So -- you know, they're guaranteed
 18 thirty-five hours a week, but a lot of them
 19 wouldn't take it, for -- they wouldn't mind
 20 taking the extra day off.
 21 Q It's not as if they were -- if they
 22 didn't come in, they wouldn't get paid?
 23 A They wouldn't get paid.
 24 Q Right. But they were guaranteed --
 25 A But if they're forced, they were

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1 L. FLANAGAN
 2 guaranteed --
 3 Q Right. They would put them somewhere,
 4 they'd --
 5 A Yeah, yeah.
 6 Q -- throw them behind the Oak Bar or
 7 behind --
 8 A Service bar.
 9 Q Yeah. Someplace so they can do
 10 something.
 11 A Yeah.
 12 Q But their primary job was to work the
 13 banquets --
 14 A Private functions.
 15 Q Okay. And during 2005 and before that,
 16 had you ever worked in banquets?
 17 A I did, yeah. When I was a service
 18 bartender I worked banquets.
 19 Q And -- and Carlos worked banquets,
 20 right?
 21 A Correct.
 22 Q And if he was a front bartender, why was
 23 he working the banquet?
 24 A No. He would work that back in the
 25 service bar. We would -- even when you were a

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1 L. FLANAGAN
 2 front bartender, say from Thanksgiving onto
 3 Christmas, say if you worked -- Carlos would
 4 be a day bartender, they might ask him to work
 5 sometimes at the night because they're short,
 6 you know.
 7 Q So Carlos worked as a service bartender
 8 at some point?
 9 A Yes. That's how you -- this is how it
 10 starts out. You come into the hotel, right,
 11 you start as a bar-back or a service
 12 bartender, then you move up as guys retire,
 13 you know, leave, and if a slot becomes open,
 14 whoever is the senior service bartender would
 15 move into the front bartender position.
 16 Q Okay.
 17 A Like a ladder.
 18 Q Then once you're a front bartender
 19 position it's unlikely that you'll be doing
 20 any banquet work?
 21 A On like -- on occasion, yes, when it's
 22 really busy at Christmastime and they're
 23 stuck, but it's very rare, yeah, because
 24 you're making tips, and the service bar guys
 25 don't make it, so, you know, they're entitled

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1 L. FLANAGAN
 2 to the banquet first.
 3 Q And you're aware that Mr. Rivera worked
 4 banquets?
 5 A Yes.
 6 Q Okay. And you were there?
 7 A Yes.
 8 Q Mr. Lai wasn't there, wouldn't have
 9 known --
 10 A He would not --
 11 Q -- unless, of course, somebody had
 12 provided him with the list, right?
 13 A Say that --
 14 Q Unless somebody provided him with a list
 15 and said where Mr. Rivera had worked?
 16 A Yeah, correct.
 17 Q So looking at P1 again, and excluding
 18 the bar-backs --
 19 A Yeah, P1. Yeah.
 20 Q -- I count nineteen bartenders --
 21 A Uh-huh.
 22 Q -- and it looks like, based on your
 23 testimony -- I actually count eighteen
 24 bartenders -- and based on your testimony, it
 25 looks like twelve of them essentially took the

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1 L. FLANAGAN
 2 two weeks and retired?
 3 A Yes.
 4 Q So when the hotel reopened I guess they
 5 needed to hire a bunch of new bartenders;
 6 didn't they?
 7 A Correct.
 8 Q And if we look at P2 --
 9 A Yeah.
 10 Q -- if you exclude the server assistants
 11 and the runners, it looks like we're talking
 12 about seventeen bartenders?
 13 A No. We're talking about eight.
 14 Q Right. Eight because we had servers --
 15 A Yeah.
 16 Q One, two -- and what do -- the servers
 17 are the waiters?
 18 A Correct.
 19 Q Now, I'm confused about P2 because you
 20 testified that you started back at the Plaza
 21 when it reopened in February of '08?
 22 A Uh-huh.
 23 Q This schedule is for January of '08 --
 24 why is that?
 25 A I can't tell you. I believe it was

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1 L. FLANAGAN
 2 February we were called back to work. Because
 3 we didn't open till March 1st, the Champagne
 4 Bar, so anything prior to March 1st would have
 5 been a training schedule, but this --
 6 Q So you don't know why this -- there's
 7 January dates in there?
 8 A No.
 9 Q And is it true today that at the
 10 Champagne Bar and the Rose Club there are
 11 eight bartenders?
 12 A It's -- yes.
 13 Q What's the server assistant?
 14 A It's a busboy.
 15 Q Okay. And runners are --
 16 A Yeah, you see, when they changed the
 17 hotel, they put the kitchen in basement so
 18 they needed these guys to bring the food up --
 19 it's three floors up so they've got to bring
 20 the elevators up.
 21 Q Now, Mr. Zapata asked you a lot of
 22 questions about people's hair color and eye
 23 color based on P2, and he started with, I
 24 guess, Prather Remm --
 25 A Yes.

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1 L. FLANAGAN
 2 Q -- and you said she has blond hair?
 3 A Yes.
 4 Q Is that natural blond hair?
 5 A Yeah, she's like -- I want to say it was
 6 natural. I mean, I don't know for sure.
 7 Q You don't know whether she --
 8 A Whether she dyed it or not -- no, I
 9 don't know.
 10 Q Same with Heather --
 11 A She was definitely natural blond. She's
 12 like Norwegian descent.
 13 Q And then Sean O'Toole has brown hair?
 14 A Yes.
 15 Q And then you said Miguel Aranda has
 16 brown eyes?
 17 A I would say so, yeah. I mean, he's
 18 brown-skinned.
 19 Q Without looking at Mr. Rivera, what
 20 color are his eyes?
 21 A I would say brown.
 22 Q Why would you say that?
 23 A Generalization mostly, Spanish guys are
 24 brown.
 25 Q You a baseball fan?

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1 L. FLANAGAN
 2 A Yeah.
 3 Q Yankees?
 4 A Yes.
 5 Q And you live in Queens?
 6 A I lived in the Bronx when I came out
 7 here first.
 8 Q Who is the third baseman?
 9 A Alex Rodriguez.
 10 Q What color are his eyes?
 11 A I don't know.
 12 Q They're light green -- would that
 13 surprise you since he's Hispanic?
 14 A Yeah. Maybe contact lenses.
 15 Q Do you know who the actress Cameron Diaz
 16 is --
 17 A Yes.
 18 Q -- Something About Mary?
 19 A Yeah. Hair is blond, yeah.
 20 Q She has blond hair -- would it surprise
 21 you that her father is Cuban?
 22 A No.
 23 Q Do you know who Christina Aguilera is?
 24 A Yes.
 25 Q What color is her hair?

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1 L. FLANAGAN
 2 A Depends when you see her.
 3 Q Do you know what her ethnicity is?
 4 A I think her mother is Irish.
 5 Q What about Shakira, do you know who she
 6 is?
 7 A No.
 8 Q But as far as you know, most Hispanic
 9 people have brown eyes?
 10 A Well, the guys I work with, they've
 11 brown eyes.
 12 Q And when you testified earlier that they
 13 had brown eyes, you were testifying it --
 14 testifying it based on your knowledge of
 15 looking into their eyes or just
 16 generalizations about their ethnicity?
 17 A Well, the guys I see every day and I
 18 work with, that would be based on --
 19 Q On actual knowledge?
 20 A Yes.
 21 Q You worked with Mr. Rivera for years,
 22 you didn't know his color, you guessed.
 23 A Generalization. I mean, I would say
 24 they're brown. Let me see them. Am I right.
 25 Q Are they?

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1 L. FLANAGAN
 2 A To me, they are.
 3 Q Okay. So --
 4 A When I used to look into men's eyes --
 5 Q What I'm trying to figure out is when
 6 you testified earlier about the color of
 7 people's hair and eyes, were you basing it on
 8 your actual looking at their eyes or based on
 9 the generalizations that Hispanics tend to
 10 have brown hair and brown eyes?
 11 A I'm basing on the fact that the guys I
 12 work with, I see them every day so I -- I
 13 never seen a guy with blue eyes or green eyes.
 14 It would jump out at me if they --
 15 Q The only reason I'm asking you that is
 16 because I asked you Mr. Rivera's eyes without
 17 looking at them and you -- it seems like you
 18 had to guess based on a generalization, and
 19 you work with him a lot, right?
 20 A Yeah, but I mean, I'm not looking into
 21 his eyes all the time. Kind of a strange.
 22 Q But you are looking at Heather Buesing's
 23 eyes and Prather Remm's eyes?
 24 A Yes. I would say they're blue.
 25 Q Do you remember the date that the

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1 L. FLANAGAN
 2 impartial arbitrator came out with the award
 3 in favor of Mr. Rivera?
 4 A No, I don't.
 5 Q But you do remember that was the first
 6 time he said anything about suing the company
 7 based on his race, right?
 8 A Yeah. As far as I remember, it was
 9 always we were talking about the arbitration
 10 case, the arbitration case, and then when that
 11 came through, later on he said he was going to
 12 pursue.
 13 Q Do you know why Mr. Rivera didn't pursue
 14 the race during the arbitration case?
 15 A No.
 16 Q Did he talk to you about it --
 17 A No.
 18 Q -- as a union delegate? When he came to
 19 you to have you talk to Evangelista about
 20 seniority --
 21 A He didn't --
 22 Q Hold on. Let me finish the question.
 23 When he came to you to ask you to talk to
 24 Evangelista about the seniority issue, did he
 25 tell you then he thought it was about his

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1 L. FLANAGAN
 2 race?
 3 A No, he didn't ask me, actually. I went
 4 down to Evangelista on my own accord.
 5 Q Okay. You went -- you went to follow-up
 6 so --
 7 A Yeah --
 8 Q -- so Mr. Rivera -- let me just --
 9 Mr. Rivera never came to you prior to the
 10 arbitration to complain about his seniority?
 11 A Yes, he did.
 12 Q Okay. When he came to you to complain
 13 about his placement at the hotel upon his
 14 recall, did he tell you prior to the
 15 arbitration that it had anything to do with
 16 his race?
 17 A Yes.
 18 Q And when was the first time he mentioned
 19 that to you?
 20 A The date -- I can't tell what date it
 21 was.
 22 Q How soon before the arbitration?
 23 A Months because it takes a long time to
 24 process the arbitration case. I mean, he was
 25 in the Palm Court for at least I would say a

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1 L. FLANAGAN
 2 year before the case came through so within
 3 that time a few times --
 4 Q Before the arbitration?
 5 A Yes.
 6 Q Before you testified at the arbitration?
 7 A Yes.
 8 Q And I take it then that when I read the
 9 transcript of the testimony, you'll testify
 10 that Mr. Rivera made some issues about his
 11 seniority being because of his race, right?
 12 A No.
 13 Q It didn't come up?
 14 A No.
 15 Q Why not?
 16 A Basically he was there -- actually, it
 17 was kind of null and void because what
 18 happened was he was going to arbitration to
 19 fight for his seniority, and what happened was
 20 the Palm Court restaurant closed down and all
 21 the waiters over there and the bartenders
 22 bumped the new hires so they all got laid off
 23 and they came to work at Rose Club and
 24 Champagne Bar, so by the time we went to
 25 arbitration he was already behind the front

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1 L. FLANAGAN
 2 bar, it was just a matter of the compensation
 3 of the money he lost.
 4 Q Right. But the reason he wasn't given
 5 the seniority is because -- I think you said
 6 it was the scuttlebutt around the hotel was
 7 because of his race, right?
 8 A Correct.
 9 Q So why didn't that come up at the
 10 arbitration?
 11 A I don't know.
 12 Q Well --
 13 A I wasn't asked about it.
 14 Q When you went to Mr. Cedeno, the
 15 business agent, you told him that Mr. Rivera
 16 thought it was about his race, right?
 17 A No, I didn't. When I discussed it with
 18 Eddie, he just gave me the subpoena, and what
 19 we talked about beforehand was all about
 20 seniority and about getting his position back,
 21 and the race never came up --
 22 Q But according to your testimony,
 23 Mr. Rivera did mention it to you prior to the
 24 arbitration, right?
 25 A Yes. But I never had a discussion with

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1 L. FLANAGAN
 2 Eddie Cedeno about it.
 3 Q Why not?
 4 A It never came up. We were just
 5 discussing about his schedule and his
 6 seniority.
 7 Q Well, hold on a second. You're the
 8 union delegate, one of the rank and file comes
 9 to the union delegate and says I believe that
 10 the reason that they're throwing me as a -- in
 11 the service bar is because I'm Hispanic, you
 12 don't think that warrants telling --
 13 A No --
 14 Q Hold on -- don't you think that warrants
 15 telling the business agent of your local?
 16 A What he believes or what happened?
 17 Q No. I want to know what happened.
 18 If -- I'm the one asking you if one of your
 19 members -- you're a union delegate, right?
 20 A Correct.
 21 Q If one of your members comes up and says
 22 I've been discriminated against because of my
 23 race, you put that in your back pocket and
 24 walk away?
 25 A Okay. I'm going to go through step by

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1 L. FLANAGAN
 2 step for you.
 3 Q Okay.
 4 A We opened up the hotel -- we opened the
 5 hotel, Carlos and Evelio are put in the Palm
 6 Court, I'm behind the front bar, now everybody
 7 in the hotel is asking why these two guys who
 8 were there for so long with seniority aren't
 9 behind the front bar, we went to Anthony
 10 Evangelista, we went to human resources, and
 11 they said its in his file that they're service
 12 bars, we called in the business agent to
 13 discuss it with him and we discussed it about
 14 the seniority and about where they should be
 15 working. After that, then nobody budged, we
 16 went to arbitration.
 17 Q Okay. I --
 18 A When this happened, then as Carlos was
 19 still working in the Palm Court and we're
 20 waiting to start, to proceed, he talked to me
 21 about -- he said, I think it's discrimination,
 22 you know, me and Evelio should be behind the
 23 front bar and we're not.
 24 MR. McLANE: Can you just read
 25 that last -- sort of last bit back.

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1 L. FLANAGAN
 2 (Whereupon, a portion of the
 3 testimony was read back.)
 4 Q When what happened?
 5 A After we went to -- after we proceeded
 6 with the arbitration case. After we went to
 7 human resources and they denied him the front
 8 bar position --
 9 Q Right.
 10 A -- and then when we had to file the
 11 grievance --
 12 Q Right.
 13 A -- then Carlos starts talking about --
 14 Q So sometime between after the grievance
 15 was filed and the arbitration is the first
 16 time he mentions to you that he thinks this is
 17 discrimination?
 18 A Yes.
 19 Q And then you told Mr. Cedeno?
 20 A No, I didn't tell Mr. Cedeno.
 21 Q Why not?
 22 A Because we filed already. We filed
 23 the case already for seniority rights. The
 24 union -- the union trials, they -- they fight
 25 for your rights as a hotel worker, and then

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1 L. FLANAGAN
 2 this case comes along afterwards because they
 3 won that case. This is his decision.
 4 Q I'm trying to figure out whether it
 5 comes along after or comes along beforehand.
 6 It seems to me from your testimony is that
 7 Mr. Rivera tells you after the grievance is
 8 filed but before the arbitration that he
 9 believes that this has something to do with
 10 his race -- those are rights, aren't they?
 11 A Right.
 12 Q Okay. So I think what I'm hearing is
 13 that he's telling you that he believes his
 14 seniority has been changed because of his
 15 ethnicity, right?
 16 A Correct.
 17 Q And he has a grievance about his
 18 seniority, right?
 19 A Correct.
 20 Q How come you didn't tell anybody that he
 21 said something about his race?
 22 A How do you mean tell anybody?
 23 Q Well, did you tell Mr. Cedeno that your
 24 rank and file member came to you and told you,
 25 hold on a second, this seniority thing may

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1 L. FLANAGAN
 2 not -- may be more than just a screw up, it
 3 might have to do with my race?
 4 A Carlos was already after talking to them
 5 himself.
 6 Q Talking to who?
 7 A Eddie Cedeno.
 8 Q So Carlos told Eddie before the
 9 mediation -- before the --
 10 A Well, he called him in about this,
 11 but he went on later on, I presume, and told
 12 him --
 13 Q You presume or you know?
 14 A I presume.
 15 Q Were you ever in a conversation where
 16 Mr. Rivera told Mr. Cedeno about his belief
 17 that his seniority was somehow disturbed
 18 because of his ethnicity or race?
 19 A No.
 20 Q Other than Carlos telling you that he
 21 believed that his seniority problem had
 22 something to do with his race, did anybody
 23 else come talk to you about the issue?
 24 A Yeah. Half the hotel.
 25 Q All right. Do -- what half?

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1 L. FLANAGAN
 2 A Okay --
 3 Q Let's do it this way: Give me all the
 4 names of everybody who came up to you before
 5 the arbitration and said that they believe
 6 that Mr. Rivera was discriminated against
 7 because of his race?
 8 A Okay. Larry Gobin, Francesco Marquez,
 9 Aziz Zaidi, the doorman Freddie -- Freddie, I
 10 don't know the last name.
 11 Q Freddie the doorman?
 12 A Yes.
 13 Q Who else?
 14 A Jose the doorman as well.
 15 Q Who else?
 16 A Bartenders from the Oak Car, Carlos --
 17 Orlando Rivera.
 18 Q Hold on. Which of the bartenders at the
 19 Oak Bar?
 20 A Orlando Rivera.
 21 Q Who else?
 22 A Jose Arbonna.
 23 Q Who else?
 24 A I mean, these are the conversations I
 25 remember. I mean, there's other people said

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1 L. FLANAGAN
 2 it to me as well but I can't remember where
 3 and when.
 4 Q Tell me what you remember? Is that all
 5 the people you remember?
 6 A Yes.
 7 Q So you remember having conversations
 8 with seven people?
 9 A Yeah. Other people were coming up to me
 10 saying what's going on.
 11 Q What kind of other people?
 12 A People that work there. Cooks in the
 13 cafeteria.
 14 Q What were the cooks in the cafeteria
 15 saying about Carlos?
 16 A They wanted know what -- what was
 17 happening, what's the progress with the case
 18 and --
 19 Q What case?
 20 A The seniority case.
 21 Q What I want to know is, how many people
 22 came to you and said to you --
 23 A Yes. These people.
 24 Q These seven people?
 25 A Yes.

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1 L. FLANAGAN
 2 Q Was that -- the cooks say that?
 3 A They were asking about the case. I
 4 can't remember exactly.
 5 Q Okay. So I take it there are more than
 6 fourteen people who work at the Plaza --
 7 A Yeah.
 8 Q -- so it's not half?
 9 A Yeah, it's not half. A lot more
 10 people -- it's common knowledge what was going
 11 on.
 12 Q So tell me what you remember about your
 13 conversation with Larry Gobin about Mr. Rivera
 14 and race discrimination?
 15 A You know, he came to me because we work
 16 together every day, and he said what's going
 17 on with Carlos and Evelio, I heard they're
 18 pissed off, what's going on, I said, yeah, he
 19 said, why aren't they over here with you
 20 working, I said, human resources said they're
 21 service bartenders, he said, well, we've
 22 worked together for years, all of us, and
 23 they're front bartenders, he goes, they're the
 24 only two Spanish guys in the department now.
 25 Q What was the department?

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1 L. FLANAGAN
 2 A The bartenders, in other words.
 3 Q And prior to them being the only two
 4 bartenders in the -- Hispanic bartenders in
 5 the department, how many bartenders --
 6 Hispanic bartenders in the department were
 7 there?
 8 MR. ZAPATA: Objection as to
 9 form.
 10 MR. McLANE: Yeah.
 11 Q Did you understand that question? Let
 12 me try it this way: So after -- after the
 13 hotel reopened, the only two bartenders of
 14 Hispanic origin at the Plaza were Evelio and
 15 Carlos?
 16 A Correct.
 17 Q Prior to that, were they more?
 18 A In the old hotel in two oh five?
 19 Q Yes.
 20 A Correct, yes.
 21 Q Was Orlando Hispanic?
 22 A Yes.
 23 Q Did he come back as a bartender?
 24 A Yes.
 25 Q So somebody was wrong, like, in the --

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1 L. FLANAGAN
 2 Larry Gobin --
 3 A No, no.
 4 Q Who was right?
 5 A The Oak Bar is separate to the hotel
 6 now.
 7 Q I understand.
 8 A Now, what I'm talking about is that when
 9 we reopened the Rose Bar and the Champagne
 10 Bar, all the other bartenders on that bit were
 11 white. Carlos and Evelio were the two guys
 12 that were sent to the Palm Court.
 13 Q All right. So the Oak Bar still exists,
 14 correct?
 15 A Correct.
 16 Q Orlando work there?
 17 A Yes.
 18 Q Do you know whether he came back there
 19 as a result of union citywide agreement?
 20 A Yes. He --
 21 Q So we have one Hispanic bartender prior
 22 to the closure who now works in the same exact
 23 place he worked when the hotel reopened,
 24 right, just works for a different boss?
 25 A Different company.

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1 L. FLANAGAN
 2 Q Different company, but -- it's still
 3 local 6, right?
 4 A Yes, yes.
 5 Q Came back as a result of recall rights?
 6 A Correct.
 7 Q Okay. What happened to Arbonna?
 8 A He's back at work.
 9 Q At the Oak Bar?
 10 A Yes.
 11 Q So another Hispanic bartender face of
 12 the Oak Bar is still a face of the Oak Bar --
 13 A Correct.
 14 Q -- after the reopening. Rubin is he
 15 Hispanic?
 16 A No. He would be -- he's from Saint
 17 Thomas.
 18 Q Jose M, Hispanic?
 19 A Yes.
 20 Q He's not back because he took the
 21 retirement?
 22 A Yes.
 23 Q Felipe, Hispanic?
 24 A Yes.
 25 Q Only reason he's not back is he took the

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1 L. FLANAGAN
 2 retirement, right?
 3 A Correct.
 4 Q Yvenel, is that a Spanish name?
 5 A Haitian.
 6 Q Haitian, okay. The only reason he's not
 7 back is because he took the retirement, right?
 8 A Yeah. He's in another hotel.
 9 Q Right. But he's not back --
 10 A Yeah.
 11 Q -- where he was? Julio, Spanish?
 12 A Yes.
 13 Q Not back because he had took the
 14 retirement or took the two weeks, right?
 15 A Correct.
 16 Q So it seems to me, correct me if I'm
 17 wrong, that the reason why there are two
 18 Hispanic bartenders at the bar is because all
 19 the other Hispanic bartenders decided not to
 20 come back, right?
 21 A Say that again.
 22 Q The only reason why it's Carlos and
 23 Evelio is because everybody else decided to
 24 take the two weeks severance pay?
 25 A Like they wouldn't be working there?

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1 L. FLANAGAN
 2 Q Yeah. In other words, if Carlos would
 3 have taken the two weeks severance, he
 4 wouldn't be back, right?
 5 A Correct.
 6 Q Then there would only be one Hispanic,
 7 right?
 8 A Yes.
 9 Q If Evelio would have taken it, there
 10 would be zero, right?
 11 A Correct.
 12 Q Do you know if there was anything
 13 discriminatory about the way that the union
 14 and the company negotiated the severance
 15 package?
 16 A No.
 17 Q Okay. As far as you know, it was evenly
 18 handed out to everybody?
 19 A Yeah, same for everyone.
 20 Q So regardless if your last name was
 21 Ramirez or your last name was Smith you got
 22 the same package?
 23 A Yes. It just depended on how many years
 24 you were in.
 25 Q Right. But that has nothing to do with

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1 L. FLANAGAN
 2 your nationality, right?
 3 A Correct.
 4 Q So when -- when Larry said to you, well,
 5 they're the only two guys in the department,
 6 what did you say?
 7 A I said, you're correct, yeah.
 8 Q And it was correct, right?
 9 A They're the only two guys that weren't
 10 in the Rose Club and Champagne Bar -- that's
 11 what he meant.
 12 Q I see. They were the service
 13 bartenders?
 14 A Yes. We had all these new guys come in,
 15 and you know, it's a union hotel, seniority is
 16 a big thing, and everybody's looking around
 17 saying why aren't these guys working behind
 18 the front bar, and he comes to me and says,
 19 why aren't these guys -- two Spanish guys are
 20 sent to the back of the house.
 21 Q And that's why you have the union,
 22 right?
 23 A Correct.
 24 Q To fight for those kind of issues,
 25 right?

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1 L. FLANAGAN
 2 A Yes.
 3 Q To fight for injustices, right?
 4 A Correct.
 5 Q That's why people form unions, right?
 6 A Right.
 7 Q That's why the people are camping out in
 8 Wisconsin day and night, right?
 9 A In the cold.
 10 Q Right. So if you're talking to,
 11 quote-unquote, half the people in the hotel
 12 about the Hispanic guys who got put into the
 13 service bar, what I can't figure out is how
 14 that doesn't make its way to the arbitration.
 15 Can you explain that?
 16 A I can't.
 17 Q Do you know if Mr. Cedeneno can?
 18 A I don't know. I've never discussed it
 19 with him.
 20 Q You never discussed anything about
 21 Mr. Rivera's race with Mr. Cedeneno?
 22 A No.
 23 Q Okay. Even if he says differently
 24 then -- and if he testifies otherwise on
 25 Monday he'll be a liar?

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1 L. FLANAGAN
 2 A Yeah. I never discussed his race. To
 3 the best of my knowledge, anyway, I didn't.
 4 Q Did you tell Carlos to go to human
 5 resources about this complaint about racial
 6 discrimination?
 7 A No.
 8 Q Are you aware that the Plaza Hotel has a
 9 policy regarding discrimination in the work
 10 place?
 11 A Yes.
 12 Q What is the policy?
 13 A Basically everybody got to be treated
 14 the same no matter where you're from or who
 15 you are.
 16 Q What happens if you're not?
 17 A I don't know. Usually, I mean, it
 18 depends on the offense, but I've never had any
 19 situation there with somebody -- oh, yes, we
 20 had a case before where guys in the Oak Room
 21 filed suit against the hotel for
 22 discrimination.
 23 Q Did you talk to them about it?
 24 A No. Heard what went down.
 25 Q If somebody called you a name based on

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1 L. FLANAGAN
 2 your Irish ethnicity at the Plaza Hotel, what
 3 would be the course of -- your course of
 4 action, what would you do?
 5 A I'd laugh. I mean, it's different for
 6 different people --
 7 Q So tell me if somebody said -- they
 8 offended you in some way, is there a -- what
 9 I'm trying to figure out is what is your
 10 knowledge of the policy at the Plaza Hotel if
 11 somebody who you represent as a union steward
 12 or union delegate comes up to you and says I
 13 believe I've been discriminated against
 14 because of X, Y or Z?
 15 A There is a hotline number. They have a
 16 number there, some person, like, that you can
 17 call. I don't know the number offhand --
 18 Q Is that what human resources is for, to
 19 take care of those issues, is that why there's
 20 a human resources department there?
 21 A Well, they have another hotline number
 22 if you don't want to go to human resources.
 23 Q Did you call the hotline number about
 24 Mr. Rivera?
 25 A No.

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1 L. FLANAGAN
 2 Q Did you call human resources about
 3 Mr. Rivera?
 4 A No.
 5 Q Did you talk to any human resources or
 6 any management employee regarding Mr. Rivera's
 7 seniority?
 8 A About his seniority, yes.
 9 Q And even though Mr. Rivera told you he
 10 believed that his seniority had something to
 11 do with his race, you never mentioned that to
 12 any management employee at the hotel?
 13 A No.
 14 Q And you never mentioned it to the
 15 business agent of the union, did you?
 16 A No.
 17 Q What did Francesco Marquez say to you
 18 about Mr. Rivera and the racial
 19 discrimination?
 20 (Whereupon, an off-the-record
 21 discussion was held.)
 22 (Whereupon, a short break was
 23 taken.)
 24 (Whereupon, a portion of the
 25 record was read back.)